



General Assembly

Distr.
GENERAL

A/C.5/46/9
23 September 1991

ORIGINAL: ENGLISH

Forty-sixth session
FIFTH COMMITTEE
Agenda item 115 (c)

PERSONNEL QUESTIONS: OTHER PERSONNEL QUESTIONS

Secondment from government service

Report of the Secretary-General

1. In section II of its resolution 45/239 A of 21 December 1990, the General Assembly affirmed that secondment from government service was not in conflict with the Charter of the United Nations and reaffirmed that it could be beneficial to both the Organization and Member States. In the same resolution, the Assembly also endorsed the basic approach of the Secretary-General regarding secondment, as set out in his report on the subject contained in document A/C.5/45/12 and Corr.1, and requested him "to review the procedures for future secondment from government service, taking into account the legitimate interests of the Organization and of the government service and the individual concerned and to submit appropriate amendments to the Staff Regulations to the General Assembly at its forty-sixth session". The present report is submitted pursuant to that request.
2. It should be recalled that, as noted in the previous report to the General Assembly, Administrative Tribunal judgement No. 482, Qiu et al., affected, inter alia, the formalities required for the creation of a valid secondment by emphasizing the need to follow the practice that the Secretariat had used in inter-agency secondments (A/C.5/45/12, para. 12). This requires complex written agreements between the Government, the United Nations and the staff member concerned rather than, as had been the practice, an exchange of correspondence between the United Nations and the Government concerned and a notation of the secondment in the letter of appointment.
3. The Secretary-General has adopted, on an interim basis, measures to ensure that the formalities required by the Tribunal are met. Of necessity these measures tend to be rather cumbersome and, at times, difficult to

implement, resulting from the fact that conditions of secondment from government service vary in accordance with divergent national laws.

4. It is therefore desirable, as indicated in the previous report to the General Assembly and as called for by Assembly resolution 45/239 A, to establish a simpler procedure by amending the Staff Regulations to provide that secondment can be created by a notation to that effect in the letter of appointment signed by the staff member. At the same time, the Secretary-General intends, prior to making such notation, to obtain from the Government concerned sufficient documentation to ascertain to his satisfaction the existence of a valid secondment from government service.

5. In view of the above considerations, it is proposed that the General Assembly adopt the draft resolution and draft amendments to the Staff Regulations contained in the annex to the present report.

6. In the context of secondment from government service, there has been a long-standing practice of replacing in a particular post staff from Member States whose nationals serve primarily under such arrangements by staff of the same nationality. Thus, in section I of resolution 35/210 of 1 December 1980, the General Assembly requested the Secretary-General "to continue to permit replacement by candidates of the same nationality" as an exception to the general rule that "no post should be considered the exclusive preserve of any Member State". In resolution 35/210, however, the Assembly limited the application of the exception to those cases where it was necessary to ensure that the representation of the Member State concerned was not adversely affected.

7. The Secretary-General wishes to observe that recent developments will, of necessity, affect the replacement practice. First, there has been a substantial increase in the number of staff on career appointment from countries whose nationals used to serve almost exclusively on fixed-term contracts following upon the general application of the provisions of Section IV of General Assembly resolution 37/126 of 17 December 1982, which requires that staff members be given every reasonable consideration for a career appointment after five years of continuing good service. Secondly, the recent admission to membership of a number of States will make it necessary to revise downward the desirable ranges. Thus, the representation of several countries whose representation is now around the mid-point will rise above this level and their nationals will therefore not necessarily be eligible to fill posts on a replacement basis. The Assembly may wish to consider whether, in view of the fact that the raison d'être of replacement has largely disappeared, this exceptional procedure should cease and all posts henceforth be filled through the normal recruitment and placement procedures. It should, of course, be reiterated that the demise of this exceptional practice would in no manner be permitted to prejudice the Secretary-General's commitment to ensure equitable geographical representation.

8. As indicated in paragraph 12 of document A/C.5/45/12, General Assembly resolution 37/126 has been confirmed by the United Nations Administrative

Tribunal as requiring that all staff, including those on secondment, receive every reasonable consideration for a career appointment after five years or more of continuing good service. The Secretary-General wishes to reiterate that, in making an independent assessment, as required by the Charter, as to whether a career appointment should be granted to a staff member who comes within the ambit of resolution 37/126, he will continue to consider all the interests of the Organization, as defined primarily by the terms of the Charter, i.e., the necessity of securing the highest standards of efficiency, competence and integrity, and that due regard will be paid to the importance of recruiting staff on as wide a geographical basis as possible. As was further indicated in paragraph 15 of the same document, the Secretary-General will also be guided by the necessity of ensuring an adequate turnover of personnel in the interest of the Organization's performance in its various fields of activity.

Annex

PROPOSED LEGISLATIVE CHANGES

Creation of a valid secondment: Proposed resolution

The General Assembly,

Having considered the report of the Secretary-General on secondment,

Recalling that secondment from government service is consistent with the Charter of the United Nations and provides a mechanism for obtaining staff,

Concerned to ensure that procedures for obtaining staff on secondment from government service remain relatively flexible and simple,

Amends staff regulation 4.1 and annex II to the Staff Regulations as follows (new text underlined):

"Regulation 4.1: As stated in Article 101 of the Charter, the power of appointment of staff members rests with the Secretary-General. Upon appointment, each staff member, including a staff member on secondment from government service, shall receive a letter of appointment in accordance with the provisions of annex II to the present Regulations and signed by the Secretary-General or by an official in the name of the Secretary-General."

"Annex II

LETTER OF APPOINTMENT

"(a) The letter of appointment shall state:

- (i) That the appointment is subject to the provisions of the Staff Regulations and the Staff Rules applicable to the category of appointment in question and to changes which may be duly made in such regulations and rules from time to time;
- (ii) The nature of the appointment;
- (iii) The date at which the staff member is required to enter upon his duties;
- (iv) The period of appointment, the notice required to terminate it and period of probation, if any;
- (v) The category, level, commencing rate of salary and, if increments are allowable, the scale of increments and the maximum attainable;

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(vi) Any special conditions which may be applicable.

"(b) A copy of the Staff Regulations and the Staff Rules shall be transmitted to the staff member with the letter of appointment. In accepting appointment the staff member shall state that he has been made acquainted with and accepts the conditions laid down in the Staff Regulations and in the Staff Rules.

"(c) The letter of appointment of a staff member on secondment from government service signed by the staff member and by or on behalf of the Secretary-General shall be conclusive proof for all purposes of the existence and validity of secondment from government service to the Organization for the period stated in the letter of appointment."
